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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re

MATTHEW JAMES SALOMON,

On Habeas Corpus.

F070164

(Kings Super. Ct. No. 03CM7373)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus.

Matthew James Salomon, in pro. per., for Petitioner.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri, David Andrew Eldridge and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Gomes, J., and Peña, J.

## **BACKGROUND**

In Kings County Superior Court case No. 03CM7373, petitioner was convicted by jury of count III, conspiring to possess a controlled substance in prison (Pen. Code, §§ 182, subd. (a)(1), 4573.6)<sup>1</sup> and count IV, conspiracy to furnish a controlled substance to a prison inmate (§§ 182, subd. (a)(1), 4573.9). (*People v. Salomon* (Oct. 18, 2005, F044183, p. 2 (F044183).) The jury also found true the allegations that petitioner had suffered two prior strike convictions (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

On October 28, 2003, petitioner was sentenced to 25 years to life in prison, to run consecutively to the prison term he was already serving in Fresno County Superior Court case No. 657684-7, and was ordered to pay a restitution fine.

In his timely filed appeal, this court reversed his conviction in count IV for conspiring to furnish a controlled substance to a prison inmate based on the Attorney General's concession, struck the abstract of judgment for the Fresno County cases and, in all other respects affirmed. (F044183, pp. 20, 34.) This court directed the trial court to prepare an amended abstract of judgment with respect to the Kings County case and to forward a certified copy of it to the California Department of Corrections and Rehabilitation. (*Id.* at p. 34.)

The amended abstract of judgment that followed shows petitioner was sentenced on the section 4573.6 conviction to a term of 25 years to life under the Three Strikes law.

Petitioner subsequently petitioned the trial court for resentencing under Proposition 36, the Three Strikes Reform Act of 2012. The court granted petitioner's motion and issued an amended abstract of judgment on May 12, 2014. It shows the court imposed a 12-year term for the controlling offense, the section 4573.9 violation—the same charge this court reversed on appeal—and an eight-year term on the section 4573.6 conviction this court affirmed on appeal. Both of the sentences were comprised of the

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<sup>1</sup> All statutory references are to the Penal Code.

upper term doubled under the Three Strikes law. The latter term was stayed pursuant to section 654.

### **DISCUSSION**

The trial court erred when it imposed any sentence on the reversed count. The Attorney General concedes the point in its informal response filed in this writ proceeding on October 30, 2014, and asks this court to grant the petition for writ of habeas corpus and to issue an order directing the superior court to resentence petitioner in accordance with law in Fresno County Superior Court case No. 657684-7 and Kings County Superior case No. 03CM7373.

That request is granted.

### **DISPOSITION**

Let a writ of habeas corpus issue directing the Kings County Superior Court to resentence petitioner in conformity with this opinion and in accordance with law in Fresno County Superior Court case No. 657684-7 and Kings County Superior case No. 03CM7373.